

matters to expedite application processing, minimize referrals to OGC, and resolve problems which may arise. Standard forms should be reviewed by and approved by OGC.

§§ 1942.120–1942.121 [Reserved]

§ 1942.122 Actions prior to loan closing and start of construction.

(a) *Excess FmHA or its successor agency under Public Law 103–354 loan funds.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(1) of subpart A of this part 1942.

(b) *Loan resolutions.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(2) of subpart A of this part 1942.

(c) *Interim financing.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(3) of subpart A of this part 1942.

(d) *Applicant contribution.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(5) of subpart A of this part 1942 this chapter.

(e) *Evidence of and disbursement of other funds.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(6) of subpart A of this part 1942.

(f) *Assurance agreement.* All applicants must execute Form FmHA or its successor agency under Public Law 103–354 400–4, “Assurance Agreement,” at or before loan closing.

§ 1942.123 Loan closing.

(a) *Ordering loan checks.* Checks will not be ordered until:

(1) Form FmHA or its successor agency under Public Law 103–354 440–57, “Acknowledgement of Obligated Funds/Check Request,” has been received from the Finance Office.

(2) The applicant has complied with approval conditions and any closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto.

(3) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(b) *Public bodies and Indian tribes.* (1) After loan approval the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon

receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(2) Loans will be closed in accordance with the closing instructions issued by OGC and § 1942.19 of subpart A of this part 1942.

(c) *Organizations other than public bodies and Indian tribes.* District Directors are authorized to close loans to organizations other than public bodies and Indian tribes without closing instructions from OGC. State Directors, in consultation with OGC, should develop standard closing procedures and forms as needed. Assistance with loan closing and a certification regarding the validity of the note and mortgage or other debt instruments should be provided by the applicant's attorney. Appropriate title opinion or title insurance is required as provided in § 1942.17 (j)(4)(i)(B) of subpart A of this part 1942.

(d) *Authority to execute, file, and record legal instruments.* District Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgements, and other certificates.

(e) *Mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument. The real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(f) *Notes and bonds.* When the debt instrument is a note or single instrument bond fully registered as to principal and interest a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

(g) *Disposition of title evidence.* All title evidence other than the opinion of title and mortgage title insurance policy, will be returned to the borrower when the loan has been closed.

(h) *Multiple advances.* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right-hand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. The following actions will be taken prior to issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for the retirement of the interim instruments and the issuance of permanent instruments of debt.

(2) The Office of the Deputy Chief Financial Officer will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the Rural Development Manager.

(3) The Rural Development Manager will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be for-

warded to the Office of the Deputy Chief Financial Officer immediately, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the Area Office and a copy will be forwarded to the Office of the Deputy Chief Financial Officer. In developing the permanent instruments, the sequence of preference set out § 1942.19(e) of Subpart A of Part 1942 of this chapter will be followed.

(i) *Bond registration record.* Form FmHA or its successor agency under Public Law 103-354 442-28, "Bond Registration Book," may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(j) *Loan disbursements.* Whenever a loan disbursement is received, lost, or destroyed, the Rural Development Manager will take the appropriate actions outlined in Rural Development Instruction 2018-D.

(k) *Safeguarding bond shipments.* FmHA or its successor agency under Public Law 103-354 personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018-E (available in any FmHA or its successor agency under Public Law 103-354 office), whenever they mail or deliver these items.

(l) *Review of loan closing.* When the loan has been closed, the Rural Development Manager will submit the completed loan closing documents and a statement showing what was done in closing the loan to the State Director. The State Director will review the documents and the Rural Development Manager's statement to determine whether the transaction was closed properly. For loans to public bodies or Indian tribes the State Director will forward all documents, along with a statement that all administrative requirements have been met, to the Regional Attorney. The Regional Attorney will review the submitted material to determine whether all legal requirements have been met. The Regional Attorney should review Rural Development standard forms only for proper

execution, unless the State Director brings attention to specific questions. Facility development should not be held up pending receipt of the Regional Attorney opinion. When the review of the State Director has been completed, and for public bodies and Indian tribes the Regional Attorney's opinion has been received, the State Director must advise the Rural Development Manager of any deficiencies that must be corrected and return all material that was submitted for review.

(m) *Loan cancellation.* Loans under this subpart are subject to the provisions of §1942.12 of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 59 FR 54788, Nov. 2, 1994; 70 FR 19254, Apr. 13, 2005]

§§ 1942.124–1942.125 [Reserved]

§ 1942.126 Planning, bidding, contracting, constructing, procuring.

(a) *General.* This section provides procedures and requirements for planning, bidding, contracting, constructing and procuring facilities financed under this subpart. These procedures do not relieve the owner of contractual obligations that arise from procurement of services.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting and constructing their facilities. Services may be provided by the owner's "in-house" engineer or architect or through contract, subject to FmHA or its successor agency under Public Law 103–354 concurrence. Architects and engineers must be licensed in the State where the facility is to be located.

(1) *Preliminary reports.* A preliminary architectural or engineering report conforming with customary professional standards is required for all construction, except that FmHA or its successor agency under Public Law 103–354 may waive the requirement for a preliminary architectural/engineering report or accept a brief report if the cost of the construction does not exceed \$100,000. Guide 6 to subpart A of this part 1942 (available in any FmHA

or its successor agency under Public Law 103–354 office) may be used.

(2) *Final reports.* Detailed final plans and specifications are required for all construction and must receive FmHA or its successor agency under Public Law 103–354 concurrence. When negotiated procurement is used for construction costing not more than \$100,000 the final plans and specifications may be provided by the contractor who submits the successful proposal. The plans and specifications must be prepared by or under the supervision of an architect or engineer who is licensed in the State where the facility is to be located and should include all materials and work to be provided under the contract. Some work and material may be omitted from the contract provided the owner furnishes detailed cost estimates for whatever is needed to fully complete the facility and will complete the facility in accordance with paragraph (e) of this section and the small purchase procedures set out in §1942.18(k)(1) of subpart A of this part 1942. In such cases, FmHA or its successor agency under Public Law 103–354 may determine that it is not necessary to require the applicant to hire a consulting architect/engineer; however, if a second contract that does not qualify for small purchase procedures is needed to complete the facility, the owner must provide for an architect/engineer to design the entire facility. When the contractor provides the plans and specifications, the contract will be considered a design/build procurement method under §1942.18(1) of subpart A of this part 1942.

(3) *Major equipment.* An architect/engineer is not required for major equipment if FmHA or its successor agency under Public Law 103–354 determines the owner has the ability to develop an adequate request for proposal and evaluate the proposals received or can obtain adequate assistance from other sources, such as State or Federal agencies or trade associations.

(c) *Design policies.* Facilities financed by FmHA or its successor agency under Public Law 103–354 must be designed and constructed in accordance with sound engineering and architectural